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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF OREGON**

DENISE and KENNETH COOK,

Plaintiffs,

v.

**BENEFICIAL OREGON INC., a Delaware
Corporation;**

**SHAPIRO & SUTHERLAND, LLC, a
Washington State LLC;**

Defendants.

} Case No. 10-CV-3121-PA
} PLAINTIFFS VERIFIED MOTION FOR
} SUMMARY JUDGMENT

8 **I. CERTIFICATION**

9 Pursuant to Local Rule 7-1(a), Plaintiffs certify that they have made a good faith effort through
10 telephone conference to resolve the dispute and have been unable to do so.

11 **II. MOTION**

12 Plaintiffs move this court for an entry of an Order of Summary Judgment in their favor with
13 regard to each count of the plaintiffs 1st amended complaint (dkt #19, 19-1, 19-2 and exhibits therein)
14 and state:

15 **III. GENERAL SUMMARY JUDGMENT ARGUMENT**

16 1. Plaintiffs primary contention is that defendants were not holder in due course of the
 17 security instrument (promissory note) in July, 2010 (at which time defendants started a foreclosure
 18 process) for the property commonly known as 300 Newt Gulch Rd., Wilderville OR (NG Property).

19 2. Defendant Beneficial has failed to comply with this courts order (dkt #22 pg 2) :

20 “Within 10 days, defendant shall submit a chain of title for the
 21 Promissory Note and Deed of Trust at issue. This chain of title should
 22 include all transfers/assignments/etc of any interest, including the
 23 beneficial interest, in the note and the deed. **Defendant shall also submit**
 24 **information regarding the present location of the original note.**
 25 **Defendant shall obtain possession of the original note and produce it**
 26 **upon the courts request.”**

27 3. In addition, foreclosure action by defendants is not lawful if there have been
 28 “**unrecorded assignments**” of defendant Beneficial's original interest to a different party. In Re:
 29 Donald E. McCoy (Bankr.Or., 2011) pg 5 .

30 **ORS 86.735 Foreclosure by advertisement and sale.** The trustee may foreclose a trust
 31 deed by advertisement and sale in the manner provided in ORS 86.740 to 86.755 if:
 32 (1) The trust deed, any assignments of the trust deed by the trustee or the
 33 beneficiary and any appointment of a successor trustee are recorded in the
 34 mortgage records in the counties in which the property described in the deed is
 35 situated;...

36 1. Plaintiffs have met their burden of demonstrating the nonexistence of any genuine issue of
 37 material fact alleged by the defendants by tendering competent evidence and providing controlling case
 38 law and statutory authority to demonstrate that no facts remaining in dispute are material. “The very
 39 object of summary judgment is to separate real and genuine issues from those that are formal or
 40 pretended, so that only the former may subject the moving party to the burden of trial.” Radobenko v.
 41 Automated Equipment Corp., 520 F.2d 540 (C.A.9 (Ariz.), 1975) pg 544 ¶ 7.

42 4. The law of the case (controlling case law and statutory authority cited in plaintiffs
 43 supporting concise statement of facts and 1st amended complaint-dkts #19, 19-1, 19-2) is such that no
 44 fact issues remain that can affect the outcome as a matter of law.

45 5. Though there remain disputed issues of fact, none of the issues of fact is material to the
46 outcome.

47 6. Plaintiffs motion for Summary Judgment is supported by its Concise Statement of
48 Material Facts and the exhibits 13-19 attached thereto.

49 Dated this 23 day of March, 2011.

50 Denise Cook
51 Denise Cook.


Kenneth Cook.